REMARKS

As stated herein above, this reply is responsive to an Office action of December 3, 2012 (the "Present Office Action.")

The term "applicant" is used herein merely for convenience, regardless of the number of inventors.

A nonfinal Office action of September 7, 2006, in this application allowed claims 7, 15, and 23, and indicated that claims 4, 12, and 20 to be allowable if presented in independent form. Thereafter, claims 1-3, 5, 6, 9-11, 13, 14, 17-19, 21 and 22 were unsuccessfully appealed. See “Decision on Appeal,” July 17, 2012. A continuation application (serial number 13/600,201, attorney docket AUS920000510US1) was filed August 30, 2012, to amend claims of the originally filed parent in order to conform to amendments made during prosecution of the parent and to incorporate claims 4, 12, and 20 into the independent claims from which they respectively depend, thereby placing them into condition for allowance in the continuation application, as indicated in the Office action of September 7, 2006.

A nonfinal Office action of October 2, 2012, indicated that claims 7, 15 and 23 of the present application will pass to issuance, provided certain formal matters were corrected. In a reply to nonfinal Office action of October 31, 2012, applicant responsively amended claims 7, 15, and 23 to address the formal matters.

Rejections in Present Office Action

The present Office action of December 3, 2012, rejects claims 15 under 35 USC 101.

In the sentence from the specification that is recited at the bottom of page 2 of the Office action, the sentence clearly distinguishes mere signals ("transmission-type media such as digital and analog communication links") from "recordable-type media such as a floppy disc, a hard disk drive, a RAM and CD-ROMs . . ." (emphasis added). That is, the sentence is clear that recordable-type media does not include transmission-type media such as digital and analog communication links.

Nevertheless, merely to expedite allowance, application herein amends claim

15 to recite "storage device" instead of "recordable-type storage medium," as the Office action helpfully suggests.

Double Patenting Rejection

The present Office action of December 3, 2012, rejects claims 7, 15 and 23 under 35 USC 101 on grounds of double patenting.

The Office action indicates the rejection is a statutory double patenting rejection on page 4, but indicates the rejection is a non-statutory double patenting rejection on page 5. Applicant believes the rejection is intended as a non-statutory double patenting rejection, since the claims are not identical and the Office action asserts that claims in one case are a species of claims in the other case. Assuming for the sake of argument that the assertion in the Office action is correct, the claims in the two cases, therefore, meet the test stated in MPEP 804II.A for non-statutory double patenting, i.e., that there is an embodiment of the invention that falls within the scope of one claim, but not the other, so that statutory double patenting does not exist.

To execute a terminal disclaimer in the parent application now would be premature, since it is uncertain what rejections may arise in the child application and what will be the scope of any claims that may issue therein. This issue is addressed in MPEP 804, which states " *If a "provisional" nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer. If the ODP rejection is the only rejection remaining in the later-filed application, while the earlier-filed application is rejectable on other grounds, a terminal disclaimer must be required in the later-filed application before the rejection can be withdrawn.*" (emphasis added).

REQUESTED ACTION

Applicant hereby requests that examiner enter the amendment, which was suggested by the examiner to overcome the rejection under 35 USC 101, and that examiner withdraws the provisional non-statutory double patenting rejection and promptly passes the application to issuance.

Respectfully submitted,

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